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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,698	09/12/2003	Julia Sarah Faircloth	PILOOI	7371
7590 12/09/2005			EXAMINER	
JULIA FAIRCLOTH 11025 NE HURLEY LANE NEWBURG, OR 97132			CONLEY, FREDRICK C	
			ART UNIT	PAPER NUMBER
			3673	
DATE MAILED: 12/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/661,698	Applicant(s) FAIRCLOTH ET AL.	
	Examiner FREDRICK C. CONLEY	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35 and 36 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,14-18,21,23-32 and 34 is/are rejected.
- 7) ☒ Claim(s) 11-13, 19-20, 22, and 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3673

In view of the Appeal Brief filed on 09/19/05, PROSECUTION IS HEREBY REOPENED.

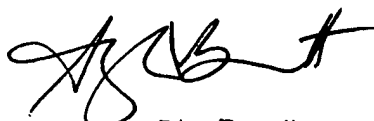
To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

SB



Suzanne Dino Barrett
Primary Examiner

Although the Prosecution is reopened, the Appellant is advised that the Appeal Brief is Non-compliant for the following reasons:

(1) Summary of claimed subject matter

A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(2) Any claim argued separately should be placed under a subheading identifying the claim by number.

(3) Appellant should include an appendix labeled "Evidence Appendix" and "Related Appeals". If there is no evidence or related appeals the Appellant should list "none" within each separate appendix. See 37 CFR 41.37

An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence

submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

Related proceedings appendix . An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-8, 10, 15-18, 23-25, 28-29, 31-32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,941,601 to Debartolo et al. in view of U.S. Pat. No. 5,893,605 to Chang.

Claims 1, 23-25, and 34, Debartolo discloses a pillow assembly with a beverage holder, comprising:

a cushioning member 10, said cushioning member including a cushioning medium (40,140), a front surface 20 and a back surface 30, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity 50, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening of a predetermined dimension, a first cavity sidewall 60 perimeter surface, and a first cavity floor surface 70

of a similar predetermined dimension, said first cavity sidewall perimeter surface connected to said first cavity floor surface,

and said first cavity sidewall perimeter surface encircled by said cushioning medium (fig. 1);

at least one item 80 removeably situated in said first cavity;

and, wherein said first cavity sidewall perimeter surface billows 140 inward toward said first cavity to snugly hold said at least one item (fig. 7); wherein said first cavity opening generally maintains said predetermined dimension in said open position and in said closed position, and said first cavity floor surface generally maintains said similar predetermined dimension in said open position and in said closed position;

wherein said first cavity sidewall perimeter surface billows in between said first cavity opening and said first cavity floor surface, said first cavity sidewall perimeter

surface at least partially obscuring said first cavity floor surface when said at least one item is removeable situated in said first cavity and when said first cavity is empty.

Debartolo fails to disclose a first door. Chang discloses a beverage holder having a first door 305 being bendable and openable to reveal a cavity 303 and closeable to a closed position. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a first door as taught by Chang in order to hide the cavity of Debartolo when not in use. Debartolo also fails to disclose indicia on the cushioning member, first door, or first item. It is well known and considered an obvious modification to employ indicia on a surface, such as a team logo, and it would have been obvious for one having ordinary skill in the art at the time of the invention to

Art Unit: 3673

employ indicia on the pillow, first door, or first item in order to personalize the pillow. With regards to the Applicant's recitation "for playing peek-a-boo hide and seek" the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 5 and 28, wherein said first cavity opening has a circumference and where said first door has a larger circumference than said first cavity opening circumference so as to overlay a portion of said front surface (Chang)(fig. 3).

Claim 6, wherein said outer perimeter of said cushioning member has a generally rectangular outline (fig. 1), said outline encircling a cushioning member 140 frontal area, said first cavity opening encircling an opening area (fig. 7). DeBartolo fails to disclose the opening area is at least 18% of the size of said cushioning member frontal area. A change in size is considered an obvious modification and it would have been obvious for one having ordinary skill in the art at the time of the invention to have the dimensions as stated above in order to hold the item within the cavity of DaBartolo.

Claim 7, wherein said cushioning member includes a shell 60, said shell housing said cushioning medium, and said shell comprising quilted fabric material (DaBartolo).

Claims 8 and 29, DaBartolo discloses an embodiment wherein said first cavity floor surface 70 is attached proximate to said back surface 30 for preventing said first cavity sidewall perimeter surface and said first cavity floor surface from turning inside out (fig. 7)(col.6 lines 20-34).

Claims 10 and 18, DeBartolo, as modified, discloses all of the Applicant's claimed limitations except for a second door connected to the cushioning member. However, DeBartolo discloses an embodiment having two cavities (fig. 18). As stated above, Chang discloses a beverage holder having a door 305 being bendable and openable to reveal a cavity 303 and closeable to a closed position. It would have been obvious for one having ordinary skill in the art to employ a second door over the second cavity of DeBartolo since it is considered a mere duplication of parts.

Claims 15 and 31, wherein said cushioning member 40 includes an outer perimeter surface, said outer perimeter surface connected to an outer perimeter of said front surface and connected to said back surface, said outer perimeter surface providing depth to said cushioning member (fig. 7).

Claims 16 and 32, DeBartolo, as modified, discloses an embodiment having a first and second cavity (fig 18), wherein said second cavity inherently has a second cavity perimeter sidewall surface which generally encircles a three dimensional void of said second cavity, and said second cavity generally encircled by said cushioning medium.

Claim 17, wherein said second cavity is in said outer perimeter surface and extending in an inward direction between said front surface and said back surface (fig. 18)(DeBartolo).

Claims 2 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,941,601 to DeBartolo et al. in view of U.S. Pat. No. 5,893,605 to Chang, and further in view of U.S. Pat. No. 6,233,763 to Spann.

Claims 2 and 26, DeBartolo, as modified, discloses all of the Applicant's claimed limitations except for a stuffed animal. Spann discloses an article of bedding having a pocket 120 receiving a stuffed animal 130. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a stuffed animal as taught by Spann in order to provide amusement for the user.

Claims 4, 14, 27, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,941,601 to DeBartolo et al. in view of U.S. Pat. No. 5,893,605 to Chang, and further in view of U.S. Pat. No. 3,378,948 to Gervaise.

Claims 4 and 27, DeBartolo, as modified, discloses all of the Applicant's claimed limitations except for a sound device that emits a sound that indicates an illustrative theme. Gervaise discloses a pillow having a decorative theme 48 illustrating bells and a sound device/bell 38 that produces a sound that further indicates the illustrative theme. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a bell and illustrative theme as taught by Gervaise in order to provide plaything for children.

Claims 14 and 30, DeBartolo, as modified, discloses all of the Applicant's claimed limitations except for said outer perimeter of said cushioning member having an outline that is shaped to further visually indicate said illustrated theme. Gervaise discloses a pillow having a decorative theme 48 illustrating bells and an outer perimeter outlined with bells 38. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a bell and illustrative them as taught by Gervaise in order to provide plaything for children.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,941,601 to DeBartolo et al. in view of U.S. Pat. No. 5,893,605 to Chang, and further in view of U.S. Pat. No. 4,688,286 to Miker.

In reference to claim 9, DeBartolo, as modified, discloses the first door connected to the front surface, said first door opening by bending and said first door is conforming to said front surface in said closed position, said front surface being convexly contoured. DeBartolo discloses all of the Applicant's claimed limitations except for a securing means. Miker discloses a pillow having a securing means for a compartment. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a securing means as taught by Miker in order to secure the door of DeBartolo when in the closed position.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,941,601 to DeBartolo et al. in view of U.S. Pat. No. 5,893,605 to Chang, and further in view of U.S. Pat. No. 6,105,188 to Perez-Mesa et al.

Claim 21, DeBartolo discloses all of the Applicant's claimed limitations except for a blanket and a container sized to hold the pillow and blanket. Perez-Mesa discloses a blanket 14 and a container 26 capable of holding a pillow 40 and blanket. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a container and blanket as taught by Perez-Mesa in order to provide portable bedding.

Allowable Subject Matter

Claims 35-36 are allowed.

Claims 11-13, 19-20, 22, and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-2, 4-10, 14-18, 21, 23-32, and 34 have been considered but are moot in view of the new ground(s) of rejection.

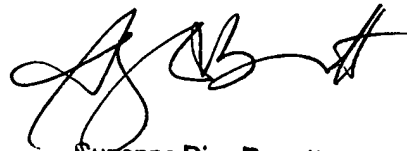
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



Suzanne Dino Barrett
Primary Examiner